80-1225

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No. ....

IN THE

Supreme Court of the United States

October Term, 1980

ALLEN MANSFIELD,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

JAMES GRIFFIN,
15527 Via De Las Olas,
Pacific Palisades, Calif. 90272,
(213) 454-5505,
Attorney for Petitioner.

Questions Presented for Review.

1. When mandatory time limits for State Bar fitness and character proceedings expire without extension or relief from default, is it a deprivation of a bar applicant's liberty and property without due process of law and the denial to him of the equal protection of the laws, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, to thereafter continue to withhold certification or the right to practice law from that applicant?

2. When State Bar Examiners unreasonably delay the processing of fitness and character investigations and other proceedings to the extent of a one and one-half year delay, is it a deprivation of a bar applicant's liberty and property without due process of law and the denial to him of the equal protection of the laws, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, to thereafter continue to withhold certification or the right to practice law from that applicant?

3. When State Bar Examiners subject an applicant to any substantial deprivation of due process of law in the conduct of fitness and character proceedings, is it a deprivation of a bar applicant's liberty and property without due process of law and the denial to him of the equal protection of the laws, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, to thereafter continue to withhold certification or the right to practice law from that applicant?

4. When the supervising State court denies a hearing, rehearing, extraordinary writ, or any opinion or other explanation to an applicant alleging that the evidence produced

by the bar examiners was insufficient to support a decision to deny admission, is it a deprivation of a bar applicant's liberty and property without due process of law and the denial to him of the equal protection of the laws, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, to thereafter continue to withhold certification or the right to practice law from that applicant?

5. When bar examiners curtail the presentation of applicant's case to less than two hours the third day of hearings and deny him the right to present witnesses and to recall for Cross-Examination a State Bar employee as previously stipulated, by informing the applicant that the Committee had heard enough to be convinced of his eligibility for admission, is it a violation of due process?

6. When the State Bar itself intervenes after the Committee's time for briefing has expired in hearings before the Committee of Bar Examiner's and submits an Amicus Curiae brief with strongly prejudicial impact on applicant's case, is it a violation of due process?

7. When the State Bar submits a forty page brief "in camera" to the Chief Justice of the California Supreme Court in the form of a letter, and applicant is given no opportunity to present argument or submit written opposition, is it a violation of due process?

8. When *mandatory* rules of sixty days for an investigation and ninety days for a hearing unless extended for good cause, are both deliberately ignored and applicant is forced to wait three and one-half years for a final decision, is it a violation of due process?

9. When an applicant is never given a hearing before a duly authorized court as to his eligibility to be admitted to the State Bar and as to the constitutionality of the state

system as administered, and when the Supreme Court of California refuses a hearing, has applicant been denied due process?

10. Under due process requirements and basic standards of fairness and equity, should an applicant be denied admission to the State Bar on hearsay and speculative assumptions alone, once he has sustained the burden of proof as to his moral qualifications by substantial evidence?

11. When one lone woman attorney is in charge of investigations and hearings of some 225 successful bar applicants who have answered one or more questions incorrectly, each six months with only paid paralegal help, causing two and three year delays, and when other successful applicants are permitted to practice law immediately, is it a violation of due process?

12. When the examining committee of the State Bar is nonpaid and beholden only to the *adversary* of the successful applicant, is it a violation of due process?

13. When a state system of Bar admission is so bogged down and so violates its own rules that several hundred applicants each half year are denied either a hearing or admission for two years or so, is it a violation of due process?

14. Is it a violation of due process when a successful applicant to the Bar may gain immediate admittance to the Bar by failing to answer certain questions fully or accurately and then obtain a status requiring a strong burden of proof to disbar, while other applicants who answer truthfully to the best of their ability are forced to sustain a much greater burden and sustain a long period of trial before being admitted?

15. May a state agency ignore its own rules and due process standards as to time limits, extensions, briefing

requirements, rulings on motions, notice, maintenance of record and transcript and then claim such rules are merely directive and not mandatory without a hearing by a duly authorized court?

16. Is a state professional licensing administrative system constitutional that does not give a right to a hearing in a duly authorized court?

17. May an applicant be denied admission to the California State Bar because of prejudice engendered by his attempted challenge in the courts of the State Bar procedure on due process grounds?

18. May the State Bar provide information and rules to the applicant which indicate he will either be sworn in immediately after passing the Bar Exam or after a sixty day investigation period and a ninety day hearing period, and then ignore their rules as advisory only and refuse to admit the applicant for *three* years?

List of all Parties.

The caption of this case in this Court contains the names of all parties.

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ALLEN MANSFIELD,

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THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Petitioner, Allen Mansfield, hereby petitions for a Writ of Certiorari to the Supreme Court of the State of California to review the denial of his application for admission to the State Bar of California.

Reference to Reports of Opinions in This Case.

There have been no written opinions of any court issued in this case; consequently there has been no publication or report, official or unofficial, of any opinions in this case.

On June 12, 1979, Hearing Subcommittee No. 2 of the Committee of Bar Examiners of the State Bar of California filed its *Findings, Conclusions and Recommendations of Subcommittee to Committee of Bar Examiners*, a copy of

which is attached hereto as Appendix "A". The Subcommittee recommended "that Applicant Allen Mansfield not be certified . . . for admission to practice law in California" ("Appendix "A", pp. 8-9), based upon a conclusion that he was "not a person of good moral character" (Appendix "A", p. 8). This conclusion was based upon the following fact findings, each of which was cited as "evidence of his lack of good moral character:" 1. "failure to disclose a charge of fraud made against him by the Unemployment Insurance Department"; 2. failure to disclose completely every item of litigation he had ever had an interest in; 3. a remark by an NASD hearing examiner in a disciplinary proceeding (not yet finally adjudicated) that "we do not believe him"; 4. a listing in the local attorney's directory admittedly inserted by the Bar Association itself, but which the Subcommittee held Petitioner Mansfield should have detected and had removed; and 5. failure to keep check on the record-keeping of a brokerage house where he kept his client's accounts (most of these clients being trusts for his own children, his own pension plan, etc.).

On April 7, 1980, the Committee of Bar Examiners of the State Bar of California, after receiving some additional evidence, issued its *Findings of Fact and Decision,* a copy of which is attached hereto as Appendix "B", again refusing to certify Petitioner, finding that he lacks moral character, finding that he gave false testimony before the full Committee (regarding an application for unemployment benefits), and adopting all the findings of the Subcommittee (Appendix "A").

On June 4, 1980, Bar Committee Member Martin R. Glick filed his *Dissent to Findings of Fact and Decision,* a copy of which is attached hereto as Appendix "C". Member Glick was at that time the Director of the California

Employment Development Department, which administers unemployment insurance.

On August 18, 1980, Petitioner Allen Mansfield filed in the California Supreme Court a Petition for Review of the decisions referred to above, which was denied without hearing or opinions, and upon *Petition for Rehearing,* received a postcard denial on October 22, 1980. Copies of the denial and postcard rehearing denial are attached hereto as Appendices "D" and "E" respectively.

Before the Final "Findings of Fact" were issued by the State Bar, Petitioner Allen Mansfield filed a *Motion to Dismiss* in the Bar Examiners' proceeding. Although the Subcommittee's Findings of Fact Nos. 6-13 relate directly to this motion, and establish its grounds, it was otherwise simply ignored, in effect denying it in whole.

Thereafter, on March 13, 1979, Petitioner Allen Mansfield filed with the Supreme Court of California a *Petition for Writ of Mandate Re Admission to the State Bar of California,* raising the same issues; a copy of this Petition is lodged with the Clerk of this Court as Exhibit "1". On April 26, 1979, this Petition was denied without opinion; Appendix "F".

On May 10, 1979, Petitioner Allen Mansfield filed a Petition for Rehearing of said denial of Writ of Mandate. This was denied by postcard dated May 23, 1979, which postcard has been inadvertently lost.

Grounds of Jurisdiction.

The Applicant's *Petition for Review* was denied by the California Supreme Court on September 24, 1980; rehearing was denied on October 22, 1980. The jurisdiction of this Court is invoked under *28 U.S. Code 1257(3).*

Constitutional and Other Provisions Indexed.

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS: EQUAL PROTECTION: APPORTIONMENT OF REPRESENTATION: DISQUALIFICATION OF OFFICERS: PUBLIC DEBT: ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rules Regulating Admission to Practice Law in California, adopted pursuant to California Business and Professions Code Sec. 6047.

RULE X. Moral Character

Section 101. (a) Every applicant shall be of good moral character. The applicant shall have the burden of proving that he is possessed of good moral character. The term "good moral character" includes qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, of the laws of the state and the nation and respect for the rights of others and for the judicial process.

(b) Section 6064.1 of the Business and Professions Code provides as follows:

"No person who advocates the overthrow of the government of the United States or of this State by force, violence or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

In applying Section 6064.1, the committee will interpret the phrase "person who advocates" to mean one who is engaged in a course of conduct, including but without limitation the use of language, which is intended to and is reasonably and ordinarily calculated to incite persons to action as speedily as the circumstances will permit; and it will interpret the term "other unconstitutional means" to mean other means involving physical force or violence.

Section 102. (a) The committee shall complete an initial investigation of each applicant as to his moral character within sixty (60) days of publication of the results of the bar examination in which the applicant was successful. Initial investigations by the committee in reference to the moral character of applicants may be informal.

(b) If as a result of the initial investigation, the committee deems a hearing necessary before it should certify the applicant for admission, the committee shall notice a hearing, or refer the matter to a subcommittee to hold a hearing as provided for hereinafter. Notice of the hearing before the committee or referral to a subcommittee shall be given to the applicant pursuant to Rule 1, Section 9, and such notice shall include a brief statement of the matters which will be the subject matter of the hearing.

Section 105. The hearing must be completed within ninety (90) days of the giving of the notice to the applicant pursuant to Section 102(b) hereof.

Section 106. (b) At the hearing, the committee, the subcommittee, the examiner and the applicant shall have these rights:

(1) To call and examine witnesses;

(2) To introduce exhibits;

(3) To cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;

(4) To impeach any witness regardless of who first called such witness to testify, and to rebut any evidence.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege set forth in the California Evidence Code or required by the United States or California Constitution shall be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

Section 107. If the matter is heard by the committee, the report of the committee shall be made and notice thereof given pursuant to Rule I, Section 9 within sixty (60) days of completion of the hearing. The report shall include findings of fact, a statement of conclusions based thereon, and a decision as to whether the applicant should be certified for admission. If the decision is to deny certification to the applicant, then at the applicant's written request a true copy of the shorthand reporter's transcript shall be furnished by the committee to the applicant, at no expense to applicant. If an applicant is denied certification for admission to practice law by the committee, he may thereafter proceed pursuant to Rule I, Section 11, and/or Rule X, Section 109.

Statement of the Case.

As shown in his Bar Application (EXHIBIT "4" lodged with the Clerk), Petitioner Allen Mansfield is 61 years old, has a master's degree in business administration, was a naval officer in World War II, was a stockbroker from 1946 to 1973, and owned his own securities firm, PACIFIC WESTERN SECURITIES, INC., from 1953 to 1971. In 1973 he entered law school. After graduating he passed the California bar examination in June, 1977. Due initially to disciplinary proceedings before the N.A.S.D. that were reported in the Bar Application, his admission to the California bar was delayed for investigation and hearing on moral character.

The hearing was not finally commenced until January 26, 1979, over one and one-half years after Petitioner was notified he had passed the bar. Petitioner complained repeatedly about the delay (See letter of June 5, 1977, and 18 letters dated June 22, 1972 through October 12, 1978 lodged with the Clerk of this Court as EXHIBITS 3 and 10 respectively).

The evidence of Patricia Lobello, State Bar attorney in charge of character investigations, was that after Petitioner passed the written bar examination, there was a four month preliminary examination, then a determination that a hearing was necessary, and then a long period for setting for hearing. (H.T. Vol. I, pp. 25-26).[1] Attorney Lobello was excused subject to Petitioner's cross-examination (H.T. Vol. I, p. 31), then never recalled. However, State Bar documents showed that no extension of time to investigate was obtained after November 4, 1977; "*Declaration of Edward I. Gorman in Opposition to Applicant's Motion to Dismiss, Exhibit*

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[1]Hearing Transcript lodged with the Clerk of this Court as Exhibits "5", "6" and "7".

'A'.''[2] No extensions or reasons for delay for over a year after November 4, 1977 were ever proved by the Bar Examiners; in fact, Petitioner's *Motion to Dismiss*[3] based upon these extreme delays was never heard or ruled on, only ignored. Thereafter the decisions referred to above were issued, after hearings as reflected in the transcripts lodged herewith.

Petitioner passed the bar exam in January, 1977; but thereafter he was unable to obtain a moral qualifications hearing before the hearing subcommittee of the State Bar until January 26, 1979 and did not receive the final decision of the Bar Committee as to his admission until April 17, 1980.

Petitioner attempted to challenge the procedural system that required an average of two to three years for such hearings, while it admitted all those answering certain questions on *the application* automatically and without any investigation other than a fingerprint check. He did this by petition for Writ of Mandate on March 13, 1979, before the issuance of the decision of a subcommittee of Bar Examiners as to his eligibility for admission. The writ was denied without hearing, likewise his motion for reconsideration, after the State Bar submitted a 40-page brief in the form of a letter to Chief Justice Rose Bird *in camera*, so that Petitioner was denied a hearing or a chance to present his case.

The hearing subcommittee of Bar Examiners withheld their decision beyond the time limit until the Supreme Court refused to hear the application for Writ and then changed its decision to rule against him.

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[2]Copy of Declaration of Edward I. Gorman is lodged as Exhibit "8".
[3]Copy of Motion to Dismiss is lodged as Exhibit "9".

The Subcommittee had cut off Petitioner's presentation of his case so that eight witnesses could not appear (H.T. Vol. III, pp. 114-117) and the stipulated cross-examination of the former Director of the Bar Investigations could not be finished; so that he was given only two hours at the end of the three day hearing to present his case, even though an applicant has the burden of proof in such proceedings.

At the end of the Subcommittee hearing, Petitioner was simply railroaded out of the room with all the witnesses and documents he had previously offered left unheard (H.T. Vol. III, p. 181). Thereafter, Petitioner himself testified before the full committee in San Francisco (testimony set forth in Deposition of ALLEN MANSFIELD, March 28, 1980). All further testimony was denied (DEPOSITION, p. 37). (A copy of the deposition is lodged with the Clerk of this Court as EXHIBIT "9".) On that severely stunted presentation, the decisions complained of were issued.

Reasons for Granting the Writ.

The record shows extreme delay in processing Petitioner's character investigation: 1½ years to get the matter to hearing, far in excess of the time mandated by the State's own rules, and another great delay in finalizing a decision after the hearings were held. The record further shows that all procedures by Petitioner to remedy this problem were ignored and, indeed, retaliated against. The record shows failure to notify Petitioner as to the subject matter to be raised and failure to accord Petitioner the opportunity to put on his case. Worst of all, the record on its face shows that the "findings of fact" are unsupported conclusions that the dissenter repudiated, yet the California Supreme Court refused hearing and as a matter of law refused the independent examination of the evidence, with all reasonable doubt resolved in the Applicant's favor, that it had mandated for

itself in *Siegel v. Committee of Bar Examiners*, 10 Cal. 3d 156, 110 Cal. Rptr. 15, 514 P. 2d 967 (1973).

Such proceedings disclose a pocket of resistance to the modern procedural standards summarized and delimited in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and supposedly applied to bar examiners by *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796, 64 ALR2d 288 (1957). Especially as to the extreme violations of their own time limitations and notice rules, the position of the State Bar and California Supreme Court is untenable, indeed, intolerable; *Peters v. Hobby*, 349 U.S. 331, 75 S. Ct. 790 (1955); *Cole v. Young*, 351 U.S. 536, 76 S. Ct. 861 (1956); and *Service v. Dulles*, 354 U.S. 363, 77 S. Ct. 1152 (1957). Such State violations of fairness and due process have traditionally been protected under the Fourteenth Amendment of the U.S. Constitution; *Truax v. Raich*, 239 U.S. 33, 38; *Yick Wo v. Hopkins*, 118 U.S. 356, 370; *Takahashi v. Fish Commission*, 334 U.S. 410; *Allgeyer v. Louisiana*, 165 U.S. 578, 589; and *Smith v. Texas*, 233 U.S. 630, 636.

The possibility of arbitrary unfairness and procedural mistreatment of the sort shown in Petitioner's case should be foreclosed by this Court for all the doctors, lawyers, accountants, engineers, architects, tradesmen, realtors, insurance agents, and others whose livelihood depends upon State licensing. Regulatory bodies should follow their own rules. Reviewing courts should be forced to actually review each decision complained of, at least at that stage when the matter first passes from the quasi-judicial sector into the true judicial system. Especially where the question of competency is settled (as by passing the written examination) and where the applicant has made a *prima facie* case on the

moral fitness issue, violation of mandatory procedural rules, especially as to time, and denial of review, should result in a waiver or estoppel mandating immediate licensing.

Conclusion.

Wherefore, Petitioner urges that a Writ of Certiorari be granted to review the files of the California Supreme Court in *Mansfield v. State Bar,* No. LA 31285.

Respectfully submitted,

JAMES GRIFFIN,

Attorney for Petitioner.

APPENDIX A.

Findings, Conclusions and Recommendations of Subcommittee to Committee of Bar Examiners.

Committee of Bar Examiners of the State Bar of California Southern Section Hearing Subcommittee No. 2.

In the Matter of: Allen Mansfield, Applicant for Admission to the State Bar of California, No. 3981.

Filed, June 12, 1979.

Hearing Subcommittee No. 2, Eugene A. Bambic, Esq., Chairman, Lola M. McAlpin Grant, Esq., Thomas J. Kelley, Jr., Esq.

To the Committee of Bar Examiners:

Pursuant to the provisions of *The State Bar Act of California* and *The Rules Regulating Admission To Practice Law in California*, ("*Rules*"), a Hearing upon the Application of Allen Mansfield; also known as Wilber Allen Mansfield, for admission to practice law in California was held on January 26, 1979, February 14, 1979 and February 16, 1979, at the Offices of the State Bar, 1230 West Third Street, Los Angeles, California.

The Hearing was conducted before Eugene A. Bambic, Esq. (Presiding Referee); Lola McAlpin Grant (Referee), and Thomas J. Kelley, Jr. (Referee). The Examiner for the State Bar was Edward I. Gorman, Esq. Allen Mansfield had previously been represented in these proceedings by Albert C. Garber, Esq. At the Hearings, Applicant appeared *in Propria Persona*. Applicant was reminded of the serious nature of the proceedings and was offered the opportunity to retain counsel. Applicant declined the opportunity to retain counsel and proceeded *in pro per*. The evidence indicates that Applicant has sufficient economic means to retain counsel, and he made no claim or showing of lack of economic means to retain counsel to represent him.

The Notice of Hearing was served. A number of continuances of the Hearing were duly granted, in part at the request of Applicant or his then counsel. The hearing was commenced on January 26, 1979, and evidence, both oral and documentary, was received. Applicant has heretofore moved to dismiss these proceedings and, by written Order, said Motion has been denied. Additional documentary evidence has been received after the close of testimonial evi- closed, and Briefs have been filed by the parties. The matter has been submitted for determination by this Subcommittee, who now make their Findings of Fact, Conclusions and Recommendations as follows:

FINDINGS OF FACT

1. Applicant commenced the study of law on September 30, 1973. (*Exhibit 1*)

2. Applicant filed a Late Registration as a law student on March 21, 1974. (*Exhibit 1*)

3. Applicant passed the First-Year Law Students' Examination in 1974. (*Exhibit 1*)

4. Applicant attended the University of West Los Angeles School of Law from September, 1973, to January, 1977. (*Exhibit 2*)

5. Applicant passed the Spring, 1977 Bar Examination. (*Exhibit B*)

6. Applicant was first notified of an investigation concerning his moral character on or about June 5, 1977 by The Committee of Bar Examiners (''Committee''). (*Exhibit B*)

7. The time for the Committee to complete its initial investigation was thereafter extended from time to time, to

and including November 2, 1977. No subsequent continuances have been granted for that investigation. (*Exhibit C*)

8. Applicant or his counsel were aware that the Committee was continuing its investigation from November 2, 1977, to September 5, 1978. Applicant or his counsel were preparing to meet the matters being investigated during the period from November 2, 1977 to September 5, 1978. (*Exhibit EE*)

9. The First Notice of Hearing appears to have been given by the Committee for a Hearing scheduled for September 5, 1978, which Hearing was thereafter continued to September 27, 1978 and then to October 19, 1978. (*Exhibits 8* and *9*)

10. The First Written Notice of Hearing specified by *Section 102*(*b*) of the *Rules* was given to Applicant by letter dated October 12, 1978, for a Hearing then scheduled for October 19, 1978. (*Exhibit 3*)

11. The Hearing of October 19, 1978 was duly continued to November 20, 1978, because one of the panel members had a calendar conflict. (*Exhibit 10*)

12. The Hearing of November 20, 1978 was duly continued to December 13, 1978 because Applicant was himself engaged in trial. (*Exhibit 11*)

13. The Hearing of December 13, 1978 was continued to January 26, 1979, because the then counsel for Applicant, ALBERT C. GARBER, had a trial conflict. (*Exhibit 12*)

14. Applicant possesses the Degree of Bachelor of Science in Business that was awarded in June, 1938 by the University of Missouri, and he possesses a Master's Degree in Business Administration that was awarded in January, 1941, by Kansas University. (*Exhibit 2*)

15. Following service as an officer in the United States Navy during World War II, Applicant worked in the se-

curities business. He has been licensed by the Securities & Exchange Commission, by the National Association of Securities Dealers, and by the New York Stock Exchange as a Broker-Dealer. Applicant has been a Registered Representative with a number of firms; has been a partner of Hill, Richards & Co.; and has been the President of and had an ownership interest in the firm known as Pacific Western Securities. (*Exhibit 2*)

16. Applicant has been an owner of a Shopping Center and a Motel. Applicant is an intelligent, sophisticated and knowledgeable person. (*Exhibit 2*)

17. Applicant has been disciplined for his activities as a Registered Representative, but denies any wrongdoing and disputes the fairness of said proceedings (*Exhibits 24, 25, 26, 27, 28* and *29*). Applicant claims that any violations that might have occurred were of a technical nature.

18. Applicant has been a party to or been otherwise involved in extensive litigation involving at least 108 cases in the State Courts of California and in the Federal Courts. A number of said cases were Class Action cases. (*Exhibits 2* and *14*)

19. Although Applicant has been listed as an attorney in Parker's Directory for its 1978 and 1979 Editions (*Exhibits 20* and *31*), he denies that such listing was with his knowledge or approval.

20. On July 1, 1976, the State of California Employment Development Department, G. Smith, served upon Applicant a written "Notice of Determination Only," wherein reference was made to certain alleged violations of the *California Unemployment Insurance Code* concerning benefits applied for in 1975 by Applicant. Said Notice contained, among otbers, the following statement:

"You have not shown that this misstatement of material facts concerning your eligibility was for purposes other than to obtain benefits."

(*Exhibit B* to *Exhibit 5; Exhibit E*)

21. On October 14, 1976, the California Unemployment Insurance Appeals Board served by mail upon Applicant a Notice of Hearing, wherein it was stated in part that the issues at said Hearing are:

"4. Section 1257(a). Whether the Claimant willfully made a false statement or willfully failed to report a material fact to get benefits."

(*Exhibit G*)

22. On October 15, 1976, by letter bearing that date, applicant wrote to the California Unemployment Insurance Appeals Board, in response to the Notice of Hearing of October 14, 1976, and, in that letter, Applicant made the following inquiry:

"In reference to section 1257(a), I must know what false statement was made or what material fact was not reported."

(*Exhibit H*)

23. On October 27, 1976, Applicant executed, under penalty of perjury, an Application to The Committee of Bar Examiners (*Exhibit 2*) wherein, in answer to Question 20(b), he denied that he had ". . . ever been accused of or charged with fraud in a judicial or administrative proceeding." Said statement, at the time it was made, was false. The ultimate merits of these events are questionable, at best, from Applicant's viewpoint. They focus on whether he was "self-employed" or an "employee." We specifically do not opine or find on the merits of that dispute, namely, whether or not Applicant did misrepresent. *We do find that the fact of the accusation itself should have been disclosed, and it was*

not. In this regard, Applicant has not been candid with the Committee with respect to his Application (*Exhibit 2*) in that, among other things, he has knowingly and intentionally failed to disclose a charge of fraud made against him by the Unemployment Insurance Department.

24. Applicant has not *been candid with the Committee* regarding his disclosure of the nature and extent of the actions (lawsuits) in which he has been a party or had an interest. (See addendum to Question 20 (*Exhibit 2*) and compare it with *Exhibit 14*.)

25. This Subcommittee is not in a position to re-try the merits of Applicant's earlier disciplinary proceedings before the NASD and the SEC, and the within Findings, Conclusions, and Recommendations do not rest upon the said proceedings. However, there is evidence within the framework of those proceedings that Applicant, in connection with said proceedings themselves, evidenced a lack of candor or honesty. This lack of honesty occurred in formal hearings before the Board of Governors of the NASD, who made the following observations in this regard:

> "Finally, we note that we heard Mansfield testify at length that he had not been subject to a prior disciplinary action for unauthorized transactions; we note that this is factually incorrect. In addition, Mansfield's testimony afforded us an opportunity to evaluate his credibility. Based upon our evaluation, we find his testimony in material respects is completely lacking in credibility. In short, we do not believe him."

(*Exhibit 28*, page 3) This Subcommittee cannot ignore such observation, and construes it to be tantamount to the opinion of the Board that Applicant is not a person of good moral character.

26. This Subcommittee does not believe that a person such as Applicant who is actively involved in extensive litigation and has the accompanying need to deal with other attorneys and the Courts, both by letter and by telephone, has not used *Parker's Directory* during the years 1978 and 1979. This being so, it borders upon the incredible that Applicant has not thus discovered that he has been listed as an attorney in *Parker's Directory* for a period of almost two years. While it is true that Applicant was not himself responsible for the initial listing, if Applicant became aware of such listing, as we believe he did, candor requires him to have taken some corrective action upon discovery of the incorrect listing. He did not do so. Moreover, there was some inference to be drawn from evidence that a person in Applicant's employ stated on the telephone at the number listed for Applicant in *Parker's* that he was "an attorney." Thus, this Subcommittee further questions Applicant's candor in the subject Hearing itself.

27. There was a considerable amount of evidence about Applicant's involvement with Pacific Western Securities, Inc. ("Pacific Western"). That evidence discloses that the entity was sold by Applicant to a third party. That third party was thereafter convicted and served a sentence with respect to the transactions of said entity. Following the sale, Applicant continued to have a relationship with said entity, and continued to allow said entity to deal with Applicant's clients' funds and securities. Applicant, Pacific Western, and the purchaser were censured in connection with the activities of Pacific Western following the sale. (*Exhibits 24* to *29*, inclusive) Again, this Subcommittee is not going to re-try the ultimate merits of the events leading up to said censuring. However, Applicant testified in this proceeding that he took no steps whatsoever to insure that Pacific Western kept and maintained the required documents, files and

records following the sale. It is the view of this Committee that an intelligent, knowledgeable person such as Applicant who was also a person of good moral character, as defined, acting under the same circumstances, when he continued to be involved with the entity and while he continued to allow his clients' money and securities to be placed in the hands of said entity, would have taken some steps to insure that the affairs of the entity were being properly conducted. This was a relationship similar to that of a fiduciary existent under these circumstances. Applicant did nothing. We find Applicant's failure to take some action to be further evidence of his lack of good moral character.

28. While Applicant has presented direct evidence of his "good moral character," there was contrary evidence.

29. Having listened to the testimony and evaluated the credibility of the witnesses, having reviewed the documentary evidence, having read and considered the briefs submitted and the points argued, this Subcommittee finds that Applicant is not a person of good moral character as that term is defined in *Section 101* of *Rule X* of *The Rules Regulating Admission To Practice Law in California*.

CONCLUSIONS.

1. The foregoing Findings and each of them are hereby repeated as Conclusions.

2. Applicant is not a person of good moral character as that term is defined in *Section 101* of *Rule X* of *The Rules Regulating Admission To Practice Law in California*, and Applicant should not be certified to the Supreme Court of California for admission to practice law in California.

RECOMMENDATION TO THE COMMITTEE OF BAR EXAMINERS

This Subcommittee, having made its Findings and Conclusions, hereby recommends to The Committee of Bar Examiners that Applicant ALLEN MANSFIELD not be

certified to the Supreme Court of California for admission to practice law in California.

DATED: June 12, 1979.

HEARING SUBCOMMITTEE NO. 2

/s/ Eugene A. Bambic
EUGENE A. BAMBIC, ESQ.
Presiding Referee

/s/ Lola McAlpin Grant
LOLA McALPIN GRANT, ESQ.
Referee

/s/ Thomas J. Kelley, Jr.
THOMAS J. KELLEY, JR.
Referee

APPENDIX B.

Findings of Fact and Decision.

Committee of Bar Examiners of the State Bar of California.

In the Matter of: Allen Mansfield, Applicant for Admission to the State Bar of California, No. 3981.

On March 29, 1980, the Committee of Bar Examiners heard the Application of ALLEN MANSFIELD. The Committee reviewed the transcript and evidence of proceedings in this matter presented to Hearing Subcommittee No. 2 of the Disciplinary Board and received additional evidence from the Applicant including his testimony.

Upon consideration of the record and the additional evidence presented by the Applicant, the Committee adopts the decision of the Hearing Subcommittee No. 2 including its Findings of Fact. The Committee also finds that Applicant's additional testimony before it was knowingly false and was given with the intent to deceive the Committee in that Applicant misrepresented his actions and statements relative to the circumstances surrounding his receipt of Unemployment Insurance Benefits.

Based upon the foregoing, the Committee finds that the Applicant, ALLEN MANSFIELD, lacks good moral character and, accordingly, the Committee concludes not to certify his Admission to the Supreme Court.

DATED: April 7, 1980

/s/ Armando M. Menocal, III,
ARMANDO M. MENOCAL, III,
Chair Committee of Bar Examiners

APPENDIX C.

Dissent to Findings of Fact and Decision.

Committee of Bar Examiners of the State Bar of California.

In the Matter of: Allen Mansfield, Applicant for Admission to the State Bar of California, No. 3981.

On April 7, 1980, the Committee of Bar Examiners adopted its Findings of Fact and Decision in the above matter. The Committee adopted the Findings of Hearing Subcommittee No. 2 and in addition found that "Applicant's additional testimony before it was knowingly false and was given with the intent to deceive the Committee in that Applicant misrepresented his actions and statements relative to the circumstances surrounding his receipt of Unemployment Insurance Benefits." I must dissent. I believe there is no concrete evidence that applicant falsified his testimony before the Committee. There certainly was not evidence to support such a finding beyond a reasonable doubt. Therefore I believe that finding was inappropriate.

Although I voted to certify the applicant, it is my view that the Committee had before it ample evidence on which to base its decision not to certify the applicant's admission.

I have written this dissent solely to put on record my exception to the Findings of Fact.

Dated: May 19, 1980

/s/ Martin R. Glick,
MARTIN R. GLICK,
Member Committee of Bar Examiners

APPENDIX D.

Order Denying Writ of Review.

In the Supreme Court of the State of California in Bank, L. A. No. 31285.

Allen Mansfield v. Committee of Bar Examiners, State Bar of California.

FILED SEP. 24, 1980.

Petition for writ of review DENIED.

/s/ Bird
Chief Justice

APPENDIX E.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102, Oct. 22, 1980.

I have this day filed Order, Rehearing Denied.

In re: L.A. No. 31285, Mansfield vs. State Bar of California.

Respectfully,

Clerk

APPENDIX F.

Order Denying Alternative Writ.

In the Supreme Court of the State of California, in Bank, L. A. No. 31088.

Allen Mansfield v. The Committee of Bar Examiners of the State Bar of California.

Filed Apr. 26, 1979.

Petition for writ of mandate DENIED.

/s/ Bird
Chief Justice